



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-124, C-570-125]

Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping and Countervailing Duty Orders – 60cc Up To 99cc Engines

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to allegations of circumvention from Briggs & Stratton, LLC, the Department of Commerce (Commerce) is initiating an anti-circumvention inquiry to determine whether imports of small vertical shaft engines with displacements between 60cc and up to 99cc (60cc up to 99cc engines) from the People's Republic of China (China) are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from China.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]

FOR FURTHER INFORMATION CONTACT: Benjamin Lubberda or Paul Litwin, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2185 and (202) 482-6002, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 2021, Briggs & Stratton, LLC, the petitioner in the AD and CVD investigations, requested that Commerce initiate anti-circumvention inquiries with regard to 60cc up to 99cc engines that are exported to the United States from China.¹ The petitioner alleges that

¹ See Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof from China / Request for Anti-Circumvention Inquiries Pursuant to Section 781(c) and/or 781(d) of the Tariff Act of 1930," dated July 30, 2021 (Circumvention Allegation).

60cc up to 99cc engines constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Orders*² pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(i). In addition, the petitioner alleges that 60cc up to 99cc engines are later-developed merchandise and should be included within the scope of the *Orders* pursuant to section 781(d) of the Act and 19 CFR 351.225(j). On August 27, 2021, MTD Products Inc. (MTD), an original equipment manufacturer (OEM) and importer, submitted comments requesting that Commerce reject the petitioner's request to initiate an anti-circumvention inquiry.³ On September 3, 2021, the petitioner submitted comments on MTD's request to decline initiating an anti-circumvention inquiry.⁴

Scope of the *Orders*

The products subject to these *Orders* are small vertical engines from China. For a complete description of the scope of the *Orders*, see the appendix.

Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers small vertical shaft engines with displacements between 60cc and up to 99cc produced in China and exported to the United States.

Legal Framework

Section 781(c) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind as merchandise has been "altered in form or appearance in minor respects... whether or not included in the same tariff classification." Section 781(c)(2) of the Act provides an exception that "{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}."

² See *Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 86 FR 23675 (May 4, 2021) (*Orders*).

³ See MTD's Letter, "Request to Reject Anti-Circumvention Inquiry Request," dated August 27, 2021.

⁴ See Petitioner's Letter, "Comments on Request to Reject Anti-Circumvention Inquiry Request," dated September 3, 2021.

While the Act is silent as to what factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this provision indicates that there are certain factors that should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, Commerce has generally relied upon “such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.”⁵ Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i), Commerce examines such factors as: (1) overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.⁶

Section 781(d) of the Act provides that Commerce may initiate an anti-circumvention inquiry to determine whether merchandise developed after an AD or CVD investigation is within the scope of the order(s). In conducting later-developed merchandise inquiries under section 781(d)(1) of the Act, Commerce will evaluate whether: (1) the general physical characteristics of the merchandise subject to the inquiry are the same as subject merchandise covered by the order(s); (2) the expectations of the ultimate purchasers of the merchandise subject to the inquiry are no different to the expectations of the ultimate purchasers of subject merchandise; (3) the ultimate use of the inquiry merchandise and subject merchandise are the same; (4) the channels of trade of both products are the same; and (5) there are any differences in the advertisement and display of both products.⁷ First, however, Commerce applies a commercial availability test to determine whether the merchandise subject to the inquiry was commercially available at the time

⁵ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order*, 83 FR 5405 (February 7, 2018) (citing S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987)).

⁶ *Id.*; and *Deacero S.A. de C.V. v. United States*, 817 F.3d 1332 (Fed. Cir. 2016)

⁷ See section 781(d)(1) of the Act.

of the investigation(s) (*i.e.*, the product was present in the commercial market or the product was tested and ready for commercial production).⁸

Analysis

After analyzing the record evidence and the petitioner's allegation, we determine that there is sufficient information to warrant the initiation of a minor alterations anti-circumvention inquiry, pursuant to section 781(c) of the Act and 19 CFR 351.225(i). However, we determine that initiation of a later-developed merchandise anti-circumvention inquiry, pursuant to section 781(d) of the Act and 19 CFR 351.225(j), is not warranted. For a full discussion of the basis for our decision to initiate a minor alterations anti-circumvention inquiry, but not a later-developed merchandise anti-circumvention inquiry, *see* the Initiation Decision Memorandum.⁹ The Initiation Decision Memorandum is a public document, on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Initiation Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Conclusion

Commerce will determine whether the merchandise subject to the inquiry (as described in the "Merchandise Subject to the Anti-Circumvention Inquiry" section above) is circumventing the *Orders* such that it should be included within the scope of the *Orders*, pursuant to section 781(c) of the Act and 19 CFR 351.225(i).

In accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation

⁸ *See Later-Developed Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order*, 71 FR 32033, 32035 (June 2, 2006), unchanged in *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 71 FR 59075 (October 6, 2006).

⁹ *See* "Decision Memorandum for Initiation of Anti-Circumvention Inquiry," dated concurrently with and hereby adopted by this notice (Initiation Decision Memorandum).

and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

Commerce will establish a schedule for questionnaires and comments on the issues related to the inquiry. In accordance with section 781(f) of the Act, to the maximum extent practicable, Commerce intends to issue its final determination within 300 days of the date of publication of this initiation.

Notification to Interested Parties

This notice is published in accordance with sections 781(c) of the Act and 19 CFR 351.225(i).

Dated: September 13, 2021.

Christian Marsh,
Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the *Orders*

The merchandise covered by these orders consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, whether mounted or unmounted, primarily for walk-behind lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment, including but not limited to, pressure washers. The subject engines are spark ignition, single-cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 99 cubic centimeters (cc) and a maximum displacement of up to, but not including, 225cc. Typically, engines with displacements of this size generate gross power of between 1.95 kilowatts (kw) to 4.75 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of this proceeding. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of this proceeding.

Certain small vertical shaft engines, whether or not mounted on non-hand-held outdoor power equipment, including but not limited to walk-behind lawn mowers and pressure washers, are included in the scope. However, if a subject engine is imported mounted on such equipment, only the engine is covered by the scope. Subject merchandise includes certain small vertical shaft engines produced in the subject country whether mounted on outdoor power equipment in the subject country or in a third country. Subject engines are covered whether or not they are accompanied by other parts.

For purposes of these orders, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as a sump, carburetor spacer, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of these orders. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (e.g., ignition coils) for synchronizing with the engine to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

Specifically excluded from the scope of these orders are “Commercial” or “Heavy Commercial” engines under 40 C.F.R. §§ 1054.107 and 1054.135 that have (1) a displacement of 160 cc or greater, (2) a cast iron cylinder liner, (3) an automatic compression release, and (4) a muffler with at least three chambers and volume greater than 400 cc.

The engines subject to these orders are predominantly classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 8407.90.1010. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. The mounted engines that are subject to this investigation enter under HTSUS 8433.11.0050, 8433.11.0060, and 8424.30.9000. Engines subject to this investigation may also enter under HTSUS 8407.90.1020,

8407.90.9040, and 8407.90.9060. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise is dispositive.

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